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up some kind of derivative successor liability, veil piercing, alterego, whatever kind of claims, and the notion was that Grace's economic enterprise, which included the Non-Debtor affiliates, were going to be freed of asbestos liability.

So if there aren't any claims asserted against them, then nothing ever gets enjoined. The injunction only kicks in in the event that a claim actually attempts to assert derivative liability of Grace against one of these entities.

Q. Do you know if any of them have asbestos liabilities for their own products or actions?

A. I am not aware of any such allegations or claims by anybody. I have never seen them or heard of them.

Q. Okay. Can you turn to page 33 of the Joint Plan, definition 178.

A. I see it.

Q. Definition 178 makes

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reference to Exhibit-19 to the Plan.

Do you see that?

A. Yes.

Q. And that's entitled Retained Causes of Action Schedule. And actually I think we will get that marked.

MR. FINCH: Are you going to mark Exhibit-19 to the Plan?

MR. BROWN: Yes.

THE WITNESS: This was supposed to be Exhibit-19. This is Exhibit-5 to the Plan.

MR. BOERGER: Sorry. Here you go.

(ACC 30(b)(6)-6 marked for identification at this time.)

BY MR. BROWN:

Q. If you thumb through there, Mr. Lockwood, you would get to page 10 where it says Retained Causes of Action (Insurance Claims)?

A. Uh-huh.

Q. And then it goes on for several pages, listing multiple insurance

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companies?

A. Yes.

Q. Among the insurance companies that are listed on this document is American Employers, which for now is OneBeacon; Employers Commercial Union, which is also OneBeacon; GEICO; Republic; and Unigard Security, which is now Seaton.

Do you have any understanding of what causes of action the Debtor is retaining with respect to those four insurance companies?

A. No. My only understanding is that they don't include causes of action relating to asbestos insurance rights, which are referred to in the exclusion at the end of 178.

Q. Do you have an understanding as to whether the Debtors will continue to be insurers under any of the policies issued by those companies or whether the Asbestos PI Trust will become the punitive insurer?

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MS. HARDING: Object to form.

MR. FINCH: Object to form.

THE WITNESS: When you say those insurance policies, which insurance policies are you talking about?

BY MR. BROWN:

Q. Whatever ones are included within the Retained Causes of Action.

MR. FINCH: Object to form.

THE WITNESS: I believe that if it's a retained cause of action, by definition, the Trust is not going to be the punitive insured under whatever cause of action. Indeed, I am not sure that the Trust -- there is sort of a semantic issue when you talk about the Trust becoming an insured.

The Trust has whatever rights under the insurance transfer it gets. Whether that

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1 would make it a, quote, insured,
2 close quote, for purposes of
3 insurance law, I have absolutely
4 no idea. That's a terminological
5 issue.

6 But my understanding of this
7 is that whatever rights Grace is
8 retaining against the four
9 companies that you identified are
10 mutually exclusive of any rights
11 that the Asbestos PI Trust is
12 getting.

13 And so since I don't know
14 what policies Grace is retaining
15 rights to or what coverages, all I
16 can say is that whatever they are,
17 they are not rights that were
18 transferred to the Trust. Grace
19 and the Trust aren't going to be
20 trying to make claims on the same
21 set of rights.

22 BY MR. BROWN:

23 **Q. But they may make claims on**
24 **the same set of policies?**

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1 A. I don't think so, because I
2 believe that the assignment of the
3 asbestos insurance rights relates to
4 policies that, as a general proposition,
5 Grace is not retaining any rights in.

6 So I would speculate that
7 you must be talking about other policies,
8 but since I have no idea what retained
9 rights Exhibit-19 or Retained Causes of
10 Action refer to, I really can't answer
11 the question.

12 **Q. Do you know whether anyone**
13 **has any idea what retained rights are --**

14 A. I would assume that the
15 Debtor knows what it thought it was
16 retaining, because that particular
17 exhibit was something that was prepared
18 by the Debtor.

19 **Q. Okay. Is there any plan to**
20 **your knowledge to update this exhibit so**
21 **that it's a little more clear in terms of**
22 **what is being retained other than simply**
23 **putting the name of the entity and an**
24 **address?**

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1 MS. HARDING: Objection to
2 form.

3 **MR. FINCH: Objection.**

4 **THE WITNESS:** Prior to this
5 deposition, I am not aware of any
6 undertaking by anybody to do an
7 update of this. Whether or not
8 the result of this deposition or
9 some other deposition, somebody
10 might possibly make such a
11 decision in the future, would be
12 rank speculation at this point.

13 BY MR. BROWN:

14 **Q. Would it be fair to say that**
15 **absent that, we are not really going to**
16 **know what's retained?**

17 **MR. FINCH: Object the form.**

18 **MS. HARDING: Object to**
19 **form.**

20 **THE WITNESS:** I told you
21 earlier, I would assume that
22 somebody at Grace knows what is
23 sought to be retained by this. I
24 don't know who that person is, but

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1 somebody probably does.

2 BY MR. BROWN:

3 **Q. Okay. If you turn to page**
4 **37 of the Joint Plan, definition 200.**

5 A. Ah, yes. I see it.

6 **Q. Okay. I have a few**
7 **questions on this one.**

8 It says, "'Settled Asbestos
9 Insurance Company' shall mean any
10 Asbestos Insurance Entity that has
11 entered into an Asbestos Insurance
12 Settlement Agreement prior to the
13 conclusion of the Confirmation
14 Hearing..."

15 **What's the basis for**
16 **limiting it to prior to the confirmation**
17 **hearing?**

18 **MR. FINCH: Object. To the**
19 **extent that calls for privileged**
20 **information or work product, you**
21 **are not allowed to answer. To the**
22 **extent you can answer that without**
23 **divulging privileged**
24 **communications, you can do so.**

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1 BY MR. BROWN:

2 Q. So that if prior to the
3 issuance of the warrant, there is
4 additional stock issued, you are going to
5 adjust the strike price as well as the
6 number of warrants; is that right?

7 A. You are going to make the
8 adjustments described in this section. I
9 am not sure I want to summarize them the
10 way you just did, but this section spells
11 out in somewhat gory detail exactly the
12 type of antidilution provision that's
13 being offered for these warrants.

14 Q. What if there is dilution
15 after the issuance of the warrant? Is
16 there any mechanism to deal with that
17 situation?

18 MS. HARDING: Object to
19 form.

20 THE WITNESS: There is a
21 warrant agreement around here
22 somewhere -- I believe it's
23 probably an exhibit to this
24 Plan -- that specifies all of the

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1 rights of the warrant holder.

2 I cannot, sitting here, tell
3 you at the moment that I can
4 recall whether there is a -- it's
5 a one-year warrant, and I just
6 don't remember whether during the
7 one-year exercise period that
8 there is or there is not
9 anti-dilution provisions.

10 BY MR. BROWN:

11 Q. Okay.

12 A. But if there are, they will
13 be in the warrant agreement as well as
14 they might be referenced in this section
15 of the Plan.

16 Q. Let's go to the heading 7.2
17 The Asbestos PI Trust.

18 A. I see it.

19 Q. Do you see the second full
20 paragraph beings "The purpose of the
21 Asbestos PI Trust"?

22 A. I see it.

23 Q. And it lists a few items
24 there.

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1 A. Yes.

2 Q. Does the asbestos PI Trust
3 assume the duties and obligations of the
4 Debtors under asbestos insurance
5 policies?

6 MR. FINCH: Object to form,
7 overly broad.

8 MS. HARDING: Object to
9 form.

10 THE WITNESS: As I
11 understand it, the duties and the
12 obligations of the Debtors under
13 insurance policies are triggered
14 only by the submission of claims
15 by the Debtor or some other
16 insured under the policies.

17 Absent an effort by the
18 insured or successor to get
19 coverage for claims, there are no
20 independent remaining duties and
21 obligations.

22 BY MR. BROWN:

23 Q. If I can stop you, by
24 successor in that sentence, you mean

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1 Asbestos PI Trust?

2 A. PI Trust.

3 Q. Fair enough.

4 A. When the Trust is assigned
5 rights under the policies and the Debtors
6 are given the right to assert any and all
7 coverage defenses --

8 MR. FINCH: You mean
9 insurers?

10 THE WITNESS: I am sorry.
11 Let me start over again.

12 When the Trust is assigned
13 rights under the policies and the
14 insurers are retaining all of
15 their coverage defenses with the
16 two exceptions we discussed
17 earlier, if the Trust proposes to
18 demand in some way or another
19 coverage from one or more insurers
20 under those policies, then
21 whatever the insurer asserts as a
22 pre-condition to coverage, what
23 you would call an obligation or a
24 right, would have to be fulfilled

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PP's
Obj: R; BE

1 to the extent that a coverage
2 court determines that there is a
3 pre-condition to coverage.

4 And since the Trust is the
5 one seeking the coverage, by
6 hypothesis, it's the only one that
7 has any incentive to make sure
8 that the rights or -- excuse me --
9 that the obligations, the
10 pre-conditions are satisfied as
11 required by a coverage court.

12 And so to that extent, yes,
13 the Trust, one way or another, to
14 the extent determined by a
15 coverage court or by negotiations
16 with insurers, will have to
17 perform what you have described as
18 the obligations and rights under
19 the assigned insurance coverage.
20 That's my understanding.

21 BY MR. BROWN:

22 **Q. Do the Debtors, the**
23 **Reorganized Debtors, retain any duties or**
24 **obligations under the asbestos insurance**

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1 **policies if this Plan is confirmed?**

2 A. There are provisions
3 involving cooperation in the Plan
4 documents which would allow the Trust to
5 require, to the extent those cooperation
6 provisions say so, the Debtors to help
7 satisfy or wholly satisfy whatever the
8 particular requirement might be that only
9 the Debtor could do.

10 So there is, I guess, the
11 answer is there is an indirect obligation
12 on the Debtor's part. But the Debtor,
13 qua-Debtor, vis-a-vie, the insurer, since
14 the Debtor under the asbestos insurance
15 rights will not on its own be seeking
16 coverage, the Debtor sort of independent
17 of the Trust would not have any rights,
18 any obligations to the insureds except to
19 the extent, as I say, that the
20 cooperation with the Trust efforts to
21 access that insurance trigger such
22 cooperation obligations.

23 **Q. And the cooperation**
24 **obligations that you described in the**

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1 **beginning of your answer are set forth in**
2 **the cooperation agreement; is that what**
3 **you were referring to?**

4 A. They are set forth there.

5 There may be -- I don't remember whether
6 they are also set forth in other
7 documents, such as the Insurance Transfer
8 Agreement and/or the Plan itself. But
9 they are set forth -- I think there may
10 be some set forth in the Insurance
11 Transfer Agreement. I am not sure. I
12 would have to look at them.

13 **Q. Okay.**

14 A. But I do remember that there
15 are cooperation arrangements.

16 **Q. If I understand your answer,**
17 **the cooperation obligation of the**
18 **Reorganized Debtors post-confirmation is**
19 **not the asbestos insurance companies but**
20 **rather to the Trust under the cooperation**
21 **agreement?**

22 A. That's correct.

23 MS. HARDING: Object to
24 form.

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1 THE WITNESS: But the
2 asbestos insurance companies,
3 through the retention of asbestos
4 coverage defenses, are the
5 indirect beneficiaries of that
6 provision.

7 BY MR. BROWN:

8 **Q. How so?**

9 A. Because if they don't -- if
10 the Trust can't get Grace to perform the
11 cooperation that the policies require,
12 the insurance companies won't have to
13 provide the coverage if the coverage
14 court says such cooperation is mandatory.

15 There is nothing in the Plan
16 that says that an insurance company -- if
17 policy obligations are not performed as
18 required by the policy by somebody,
19 nevertheless they have to pay on the
20 insurance. The only entity or person
21 that could make such a determination
22 would be a coverage court judge and only
23 in the context of deciding that for
24 whatever reason the particular obligation

sought to be enforced by the insurer was not applicable or required.

Q. Okay. I want to ask you the same series of questions with respect to two other types of documents, and we can try to short-circuit this or you can give me the long answer. I don't care.

Would your answers to the questions concerning the assumption of duties under the asbestos insurance policies or the retention of those duties, as you have just articulated, be the same if my questions dealt with the Asbestos Insurance Settlement Agreements?

A. Well, sort of, except that the Asbestos Insurance Settlement Agreements, as far as I am aware, don't have any obligations. They fully performed. Well, strike that. There are two categories of asbestos insurance.

Q. I want to get to the third one as well.

A. There is a pre-petition where it's been fully performed, and

there is post-petition one where we make a settlement as the case is going on, such as the Equitas agreement that I mentioned before, and any others that might get entered into.

With respect to the former, the pre-petition settlement agreements, it's my understanding, rightly or wrongly, that both parties have essentially fully performed those agreements, both the Debtors and the insurers, at least to the extent described in Exhibit-5, which is where those are identified and described.

The only remaining obligation, quote/unquote, that I am aware of under those agreements is a potential indemnity obligation on the part of Grace in the event that somebody successfully or attempts to sue a settled insurer.

The Plan channels to the Trust any claims against those settled insurers, and, therefore, there should

never be any indemnity claim because the claim gets cutoff from the insurer before it reaches the point where the insurer has paid money, which would trigger an indemnity right. That's quite a bit different from the non-settled coverage that I was discussing earlier.

Q. But that obligation, to the extent it exists, is being assumed by the Asbestos PI Trust?

A. That obligation -- if one could hypothesize, on the one hand, a 524(g) order that created the Trust in the first place and protected the insurer at the same time, which is what this Plan does, and simultaneously somebody being able to violate the 524(g) injunction by successfully suing a protected party without blowing up the entire Plan and blowing up the Trust in the process, then in that almost unimaginable hypothetical situation, the protected insurer would have an indemnity claim against Grace, which would be channelled to the Trust

and either -- I forget whether it's Section 5.12 or 5.13 of the TDP says that the Trust has to honor that claim to the extent that it's valid.

Q. Okay. I know some others in the room have probably a question about another type of agreement.

Asbestos Insurance Reimbursement Agreements, are the obligations of the Debtors under those documents being assumed by the Trust?

A. That cannot be answered yes or no, because the Trust and its handling of claims is obviously going to be in some sense different from Grace in its handling of the claims because Grace didn't have a TDP.

The Plan proponents are seeking in the Plan and in the confirmation process a ruling from the court under applicable bankruptcy principles that the Debtors can transfer those agreements to the Trust and the Trust's performance under those

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<p>1 provision, essentially that we are</p> <p>2 going to transfer the assets to</p> <p>3 the Trust and if you got a claim</p> <p>4 or an interest in the assets, then</p> <p>5 you can litigate that claim</p> <p>6 against the Trust.</p> <p>7 But we are going, I guess,</p> <p>8 have potential confirmation</p> <p>9 objections about whether there are</p> <p>10 any such claims. I mean, the mere</p> <p>11 assertion of a claim doesn't mean</p> <p>12 that it's valid.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. Okay. If I can direct your</p> <p>15 attention down to 7.2.4, which is</p> <p>16 entitled Assignment and Enforcement of</p> <p>17 Asbestos PI Trust Causes of Action.</p> <p>18 A. Yes.</p> <p>19 Q. I must confess, I am a bit</p> <p>20 baffled by this one, so I need some help</p> <p>21 with it.</p> <p>22 How do Asbestos PI Trust</p> <p>23 causes of action differ from asbestos</p> <p>24 insurance rights?</p>	<p>1 Asbestos PI Trust claim against the</p> <p>2 Trust, the Trust could assert Grace's</p> <p>3 contribution rights as a counterclaim to</p> <p>4 that. That's two categories of things</p> <p>5 that this is intended to include.</p> <p>6 Q. Okay. Let's go to page 64,</p> <p>7 7.2.6, Creation and Termination of the</p> <p>8 Asbestos PI TAC.</p> <p>9 A. Correct.</p> <p>10 Q. It says, "On or before the</p> <p>11 Confirmation Date, the initial members of</p> <p>12 the Asbestos PI TAC shall be selected by</p> <p>13 the Asbestos PI Committee."</p> <p>14 That has already occurred,</p> <p>15 correct?</p> <p>16 A. Correct. They are</p> <p>17 identified in the Asbestos PI Trust</p> <p>18 Agreement.</p> <p>19 Q. Okay. How many actual</p> <p>20 committee members are there on the</p> <p>21 Asbestos PI Committee?</p> <p>22 A. I don't remember. But we</p> <p>23 have the Disclosure Statement here. I</p> <p>24 could pretty quickly find out by just</p>
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<p>1 A. Well, I have to go back and</p> <p>2 look at the definitions to answer that</p> <p>3 question.</p> <p>4 Well, I think asbestos PI</p> <p>5 Trust causes of action does include</p> <p>6 asbestos insurance rights.</p> <p>7 Q. What else does it include?</p> <p>8 A. Well, if you look at the</p> <p>9 definition, it includes defenses such</p> <p>10 that, for example, if a claimant says, I</p> <p>11 have a valid claim against Grace that's</p> <p>12 channelled to the Trust and the Trust</p> <p>13 disagrees with it, the Trust retains all</p> <p>14 the defenses to that claim that Grace</p> <p>15 would have had. That's clause A under</p> <p>16 definition 47.</p> <p>17 Q. Okay.</p> <p>18 A. Clause B is, for example,</p> <p>19 contribution rights, et cetera. So, for</p> <p>20 example, if the Trust has -- if Grace has</p> <p>21 contribution rights that it has not</p> <p>22 asserted and that which are still valid</p> <p>23 against a codefendant in a tort system</p> <p>24 and the codefendant brings in indirect</p>	<p>1 looking at it where they are identified.</p> <p>2 Q. Okay.</p> <p>3 A. It's certainly more than the</p> <p>4 four that are going to be on the TAC.</p> <p>5 Q. Okay. Is it fair to say</p> <p>6 that the actual committee members who are</p> <p>7 asbestos claimants act through their tort</p> <p>8 counsel in connection with their</p> <p>9 obligations as committee members?</p> <p>10 A. As a general proposition,</p> <p>11 that's true. In any given committee on</p> <p>12 any given issue, an individual member</p> <p>13 might choose to show up and act on their</p> <p>14 own behalf, and there have been some</p> <p>15 examples in the past where that has</p> <p>16 occurred.</p> <p>17 But, as a general</p> <p>18 proposition, the committee members are</p> <p>19 blue-collar folks of limited legal</p> <p>20 knowledge, and they delegate to their</p> <p>21 personal injury lawyers their sort of</p> <p>22 activities acting for them as an agent on</p> <p>23 these committees.</p> <p>24 Q. Okay. You are counsel to</p>

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the Asbestos PI Committee. You don't have occasion, do you, to deal directly with the actual claimants?

MR. FINCH: Object to the form.

THE WITNESS: That's not entirely true. I get calls periodically that I just got this incomprehensible Disclosure Statement from Grace and could you please tell me what it means or something. But as a general proposition --

MR. FINCH: Transfer to it to Finch.

THE WITNESS: Or where do I file my proof of claim.

But, as a general proposition, I don't nor do other folks at Caplin & Drysdale deal directly with original committee members.

BY MR. BROWN:

Q. You deal with personal

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injury attorneys, correct?

A. As a general proposition, we deal with the PI lawyers who have been appointed by their client committee member to act on their behest in the committee.

Q. Now, the TAC members are John Cooney, Perry Weitz, Joe Rice, and -- who was the fourth one?

A. Well, I can tell you by looking at the PI Trust Agreement, which is Exhibit-2 to the Plan and looking at the signature page, we should have, which is --

Q. Russell Budd.

A. Russell Budd, John Cooney, Joseph Rice, and Perry Weitz.

Q. And each of them works for a law firm, correct?

A. Each of them is a partner a law firm, yes.

Q. Sorry. I didn't mean to...

Now, does each of those law firms have a client that sits on the

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committee?

A. Yes.

Q. And do those committee members for those firms act through those four gentlemen?

A. On the committee?

Q. Yes.

A. Generally, yes.

Q. Okay. So is it fair to say that Mr. Rice, Mr. Weitz, Mr. Cooney, and Mr. Budd selected themselves to be members of the TAC?

A. No, because there are many other members of the committee, and the committee as a whole, which, in this particular case, I believe has a majority of members that are not these four gentlemen, decided which of their members they thought would be appropriate persons to put on the TAC.

Q. And how was that decided?

A. As far as I know, they had informal discussions, and they had a committee meeting. I don't remember

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whether there were votes or anything like that. But at the end of the day, through some sort of nomination or informal self-nomination or self-nomination, speeches, lobbying, discussions, what have you, there came a time at which the committee voted to select these four people.

Q. Okay.

A. And I might add that the Future Claimants Representative had a sort of a generalized oversight in the sense that while the Plan contemplates that the committee would nominate the TAC. If the FCR thought, for some reason or another, that somebody had been put on the TAC that was a real bad idea, the committee would probably have had to listen to the Future Representative's views on that even though the Futures Rep did not have sort of a formal veto or role in that process.

Q. Okay. I want to now turn to page -- well, it's 69 on my version,

Section 7.7, Conditions to Occurrence of the Confirmation Date, and I want to focus your attention first on (g).

A. I see it.

Q. What are the securities that are funding the Asbestos PI Trust?

A. The warrant and the Deferred Payment Agreement, which is a debt obligation, which also includes, I believe, a promissory note or promissory notes.

Q. Can you describe for me the circumstances under which the asbestos PI claim -- excuse me -- the Asbestos PI Trust will be funded with dividends?

A. In the event that it exercises the warrant and acquires stock pursuant to that exercise and the stock pays dividends, it will get dividends.

Q. And if the warrant is not exercised?

A. Then it won't get dividends.

Q. What about if there is a default under the deferred payment note?

A. My recollection is that the Trust has the right to get 50.1 percent of the stock of the Debtor under those circumstances.

But, again, the terms of -- that's a very complicated set of documents, and the precise terms of that are whatever the document states. I can only give you a sort of a very generalized description.

Q. Okay. Let me draw your attention now down to (l), condition (l).

A. Yes, I see it.

Q. What does that mean?

MS. HARDING: Object to form.

THE WITNESS: Well, what it means is that if you didn't have a TDP, which includes things like a payment percentage and mechanisms for trying to limit the ways in which the Trust expends monies on claims, and you just had sort of a come in, sue the Trust

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and the tort system, et cetera, you would have a first-come-first-serve operation where there was the distinct possibility that, as it happened in the Manville Trust at the very beginning, all the money would run out the door at the front end, and there wouldn't be anything left for future claimants, which would violate 524(g).

BY MR. BROWN:

Q. Okay. Well, the way that this provision is written suggests that any procedures other than those that are set forth in this Plan would defeat the purposes of Section 524(g).

Is that what is intended here?

MR. FINCH: Object to form.

MS. HARDING: Object to

form.

BY MR. BROWN:

Q. Are there other options, is

the question?

A. If the question is could one hypothesize a somewhat different set of TDPs that had somewhat different procedures, the answer is depending on what that different TDP set of procedures was, you might be able to say the same thing about it.

The purpose of this thing is to say that this structure, according to the court, satisfies the requirements of 524(g) that say that you have to establish this requirement.

I mean, this is a finding of fact that is intended to have the court rule that the Plan does, in fact, meet the requirements of a subsection of 524(g).

Q. You could, in fact, have a Plan that met the qualifications for 524(g) that actually had a role for asbestos insurance entities, correct?

MR. FINCH: Object to form.

MS. HARDING: Object to

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CI 1 form.

2 **THE WITNESS:**

3 Hypothetically, probably yes. It
4 would be more difficult, but,
5 hypothetically, yes. You could
6 have -- we have had some plans
7 that had coverage in place
8 agreements with insurers, for
9 example, that we felt satisfied
10 524(g). But you have to get the
11 insurers' agreement to have a
12 coverage in place agreement.

13 BY MR. BROWN:

14 **Q. Okay. Let's go now to**
15 **condition (r) -- I am sorry. Condition**
16 **(s).**

17 A. Yes.

18 **Q. Now, for purposes of my**
19 **question, I want you to assume that when**
20 **I use the term "settled asbestos**
21 **insurance companies," I want you to**
22 **assume that those that are pre-petition.**

23 A. Okay.

24 **Q. And my question is a very**

1 **general one, because I have heard**
2 **different views, and that is, what**
3 **benefits are being provided by or on**
4 **behalf of settled asbestos insurance**
5 **companies listed on Exhibit-5?**

6 A. It is the position of the
7 ACC that Grace is paying close to
8 \$3 billion of value to the Trust on
9 behalf of not only itself but a variety
10 of other protected parties, including
11 Non-Debtor affiliates and, in this
12 particular case, settled asbestos
13 insurers.

14 And it is doing so on behalf
15 of settled asbestos insurers because
16 those insurers have indemnity claims
17 against Grace, which are being, if they
18 hypothetically could ever occur, are
19 being channelled to the Trust as a means
20 of protecting Grace against such -- well,
21 let me back up.

22 The purpose of putting
23 settled asbestos insurers in here is not
24 to provide a gratuitous asbestos insurers

1 because we think they are nice folks.

2 **Q. I didn't think so.**

3 A. Settled asbestos insurers,
4 by definition, are insurers that have
5 indemnity rights against Grace.

6 **Q. They have also paid a lot of**
7 **money?**

8 A. And they paid a lot of money
9 in the past. But the past money -- money
10 is fungible. The past money went into
11 Grace's coffers, went out or didn't go
12 out, et cetera. But they are not being
13 asked for any new money.

14 But Grace has an economic
15 interest in not having asbestos PI claims
16 brought against those insurers that could
17 then trigger an indemnity obligation of
18 Grace to the insurer against which that
19 asbestos PI claim was asserted. They
20 have an economic interest in preventing
21 that.

22 So the deal is channel any
23 such claim that might give rise to the
24 asbestos indemnity claim to the Trust,

1 and in exchange for that, part of what
2 Grace is paying you is to get rid of
3 asbestos PI claims which include indirect
4 asbestos PI claims for indemnity or
5 direct asbestos PI claims for indemnity.

6 **Q. Okay.**

7 A. And that's the basis.

8 **Q. I think you said at the very**
9 **beginning of either the last question or**
10 **the one before that Grace was**
11 **contributing 3 million?**

12 A. Billion.

13 **Q. That's what I thought.**

14 **Okay. I just wanted to make sure I had**
15 **the number correct.**

16 A. I mean, that's our view of
17 the approximate amount of what they were
18 contributing at the time we made the
19 deal, I guess would be a better way to
20 put it. There are other people that
21 might value it differently.

22 Some of things that were
23 worth more at the time the deal was made
24 are worth less today but hopefully will

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1 at that injunction.

2 I can't recall ever having
3 spent a lot of time thinking about that
4 issue before, but it seems possible that
5 that hypothetical claim could be enjoined
6 by the successor claims injunction in
7 Section 8.5 of the Plan as against
8 Fresenius and Sealed Air.

9 **Q. I want to turn your**
10 **attention now to Section 7.15. We have**
11 **talked about it a little bit already,**
12 **Insurance Neutrality.**

13 A. I have it.

14 **Q. Okay. Other than the**
15 **conditions set forth in (g) under 7.15,**
16 **are asbestos insurance entities bound by**
17 **any other findings or conclusions**
18 **contained in the Plan?**

19 A. Yes, potentially under
20 Section 7.15(j).

21 **Q. Okay. Anything else?**

22 A. Well, yes, two other
23 categories of things. One would be
24 rulings on compliance with the bankruptcy

form.

2 THE WITNESS: Let me turn to
3 Section 11.9. I don't think so,
4 because I think the exculpation
5 provision comes under the heading
6 bankruptcy issues.

7 The exculpation provision is
8 pretty limited. What it applies
9 to are acts or omissions in
10 connection with or arising out of
11 the Chapter 11 cases. And my
12 understanding of what is intended
13 to be covered by that is some
14 claim that one of the parties
15 covered by it engaged in some sort
16 of misconduct during the course of
17 the bankruptcy case -- I don't
18 know -- a claim, to put it
19 personally, the Asbestos Claimants
20 Committee somehow or another
21 breached a fiduciary duty to its
22 constituency by proposing a Plan
23 that this exculpation provision
24 would apply to that sort of a

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1 code provisions, which are not under the
2 definition of asbestos coverage defenses
3 preserved, as we had discussed earlier.

4 **Q. Okay.**

5 A. And, secondly, there is a
6 race judicata provision in Section
7 7.15(e) that, in effect, says that if an
8 asbestos insurer actually litigates some
9 claim in the bankruptcy case, it could
10 be -- assuming that otherwise
11 non-bankruptcy principles of race
12 judicata or collateral estoppel would
13 apply, it could be bound by the outcome
14 of any such litigation that it initiated.

15 **Q. Okay.**

16 A. Other than that, I believe
17 the answer to your question, those are
18 the only conditions that I am aware of.

19 **Q. Okay. Would it be correct**
20 **to say that this provision overrides the**
21 **exculpation provision in the Plan which**
22 **appears at Section 11.9?**

23 MR. FINCH: Object to form.

24 MS. HARDING: Object to

1 claim or a similar claim against
2 the Debtors.

3 But those types of claims
4 are not insurance coverage claims
5 or defenses. They would just be
6 some sort of -- and, indeed, it's
7 almost inconceivable to me how an
8 insurance company could ever have
9 the sort of claim that would be
10 exculpated by Section 11.9,
11 frankly.

12 BY MR. BROWN:

13 **Q. Well, if they did --**

14 MR. FINCH: Object to the
15 form.

16 BY MR. BROWN:

17 **Q. -- would the exculpation**
18 **provision take precedence over Section**
19 **7.15?**

20 MR. FINCH: Object to form.

21 MS. HARDING: Object to
22 form.

23 THE WITNESS: That question
24 is almost impossible to answer,

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1 because without knowing what the
2 claim is -- I mean, 7.15 addresses
3 specific types of situations
4 having to do with insurance.

5 11.9 addresses claims that,
6 on their face, have no apparent
7 relationship to insurance, and,
8 therefore, to know whether there
9 is any overlap between the two to
10 determine which one would prevail
11 in the event that there was an
12 overlap, you would have to have
13 some idea what kind of claim you
14 are talking about. And, frankly,
15 I have no idea what kind of claim
16 you want me to hypothesize for
17 purposes of that question.

18 BY MR. BROWN:

19 Q. All right. There are some
20 releases that are mentioned in Section
21 7.15, and I want you to put those aside
22 for a moment.

23 Other than the releases that
24 are cited in 7.15, are any other releases

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1 that appear in the Plan or Plan documents
2 binding on asbestos insurance entities?

3 MS. HARDING: Object to
4 form.

5 THE WITNESS: I would have
6 to give you a very similar answer
7 to the one I just gave you on
8 exculpation because I would have
9 to know what kind of claims you
10 are talking about.

11 7.15 is intended to deal
12 with insurance policy/settlement,
13 insurance settlement, insurance
14 reimbursement situations, and
15 preservation of insurer rights
16 with respect to those types of
17 agreements. Releases in the Plan
18 may or may not cover those
19 situations.

20 As a general proposition, I
21 don't think the Plan purports to
22 release claims by asbestos
23 insurers sort of generically
24 against a whole lot of different

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1 people. There are some specific
2 releases that we have talked about
3 already.

4 Without knowing what sort of
5 a claim you believe the Plan
6 releases and being able to figure
7 out whether that claim ties into
8 the sort of relationships that
9 7.15 -- policy type relationships
10 that 7.15 is intended to address,
11 I really can't answer. I am not
12 trying to evade the question. I
13 just can't answer it for the
14 reasons I stated.

15 MR. BROWN: Okay.

16 (ACC 30(b)(6)-8 and 9 marked
17 for identification at this time.)

18 BY MR. BROWN:

19 Q. All right. Mr. Lockwood,
20 you have before you two documents, ACC-8
21 and ACC-9. Let's start with 8.

22 A. I have it.

23 Q. Have you ever seen that
24 document before?

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1 A. Yes.

2 Q. What is it?

3 A. It is a complaint by The
4 Scotts Company attempting to initiate an
5 adversary proceeding in the Grace
6 bankruptcy case against various insurers
7 and Grace.

8 Q. Okay. And is the relief
9 that is sought by Scotts in this
10 adversary complaint as against the
11 insurers that are defendants, who are
12 also settled asbestos insurance
13 companies, enjoined in its totality?

14 A. As of right now or under the
15 Plan?

16 Q. Under the Plan.

17 A. I want to say yes to that,
18 but I would have to say this: I believe
19 that Scotts is asserting claims in this
20 action as asserted additional insured
21 under vendor coverage in W.R. Grace
22 insurance policies, point one.

23 I believe the basis is suits
24 against Scotts for Scotts' liability for

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1 BNSF, for example, purports to
2 have, at least in one instance, I
3 think it's Royal, claims issued
4 directly to it by Royal that were
5 somehow procured by Grace but
6 which don't cover Grace. I don't
7 believe that this injunction would
8 preclude suits by BNSF on that
9 sort of insurance claim.

10 BY MR. BROWN:

11 **Q. Would the prior injunction**
12 **enjoin that type of claim?**

13 A. The asbestos personal
14 injury?

15 **Q. Yes.**

16 A. No, because those policies
17 are not within the definition -- they are
18 not covered in Exhibit-5, and so Royal
19 wouldn't be an asbestos-protected party
20 with respect to those policies.

21 We are now talking about
22 non-settled coverage here, aren't we?
23 Wasn't that what your question was?

24 **Q. I don't know. This was your**

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1 **hypothetical.**

2 A. You asked me were the claims
3 as additional insureds of BNSF and Scotts
4 covered by this injunction, and I am
5 trying to tell you it depends on what
6 kind of claims against whom.

7 I mean, it's got -- first,
8 unlike the 524(g) injunction, which
9 applies only to protected parties, this
10 applies to people with settled coverage,
11 unsettled coverage, reimbursement
12 coverage, as long as it's coverage that's
13 being transferred to the Trust. If it's
14 coverage that's not being transferred to
15 the Trust, then there is no effort to
16 protect it.

17 **Q. Okay.**

18 A. The complexity of your
19 question arises out of the fact that you
20 could have coverage that's being
21 transferred to the Trust, which somebody
22 nevertheless claims to be an additional
23 insured on, such as Scotts under a vendor
24 endorsement. And there, I think this

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1 injunction probably does preclude Scotts
2 from seeking that coverage, although I
3 really have to think about that.

4 I don't know. I have to
5 confess that I haven't really -- I would
6 really have to parse this to make sure
7 whether -- if you are talking about
8 unsettled coverage, not settled coverage,
9 but unsettled coverage. And I am not
10 sure Scotts -- so if it's unsettled,
11 then, by definition, it hasn't been
12 indemnified by Grace. So the claims
13 don't go to the Trust on that basis.

14 I guess I have to just say I
15 think it may very well be enjoined by
16 this, but, really, to be more confident
17 about that, I would really have to spend
18 more time parsing this and thinking about
19 it.

20 **Q. Okay.**

21 A. I think it would be
22 channelled -- not channelled but
23 enjoined.

24 **Q. I am going to move at this**

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1 **point from the Plan to another document,**
2 **so why don't we take a quick break.**

3 A. Okay.

4 (There was a break from 2:10
5 p.m. to 2:22 p.m.)

6 BY MR. BROWN:

7 **Q. Mr. Lockwood, can you take a**
8 **look at Exhibit-2. That's Exhibit-2 to**
9 **the Plan, which we are going to mark as**
10 **ACC1-10.**

11 (ACC 30(b)(6)-10 marked for
12 identification at this time.)

13 BY MR. BROWN:

14 **Q. Can you identify it?**

15 A. ACC Exhibit-10 is the
16 Asbestos PI Trust Agreement, which is
17 attached as Exhibit-2, to the February
18 27, 2009 Plan reorganization of W.R.
19 Grace.

20 **Q. Can I direct your attention**
21 **to Section 2.2 entitled General**
22 **Administration and specifically**
23 **subsection (e).**

24 A. Yes.

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Q. There is a reference in subsection (e) to the TAC, T-A-C, which is the Trust Advisory Committee, correct?

A. Correct.

Q. And the Futures Representative, which is the Asbestos PI Futures Representative, correct?

A. Correct.

Q. And earlier today, we went through a list of the individuals who are on the TAC, and you mentioned Russell Budd, John Cooney, Joe Rice, and Perry Weitz.

A. Correct.

Q. Am I correct that each of those gentlemen or their respective firms represent asbestos claimants with claims against Grace?

A. Correct.

Q. Can you give me some idea of how many claims Mr. Budd's firm has against Grace?

MR. FINCH: Objection, lack of foundation.

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MR. FINCH: Objection, foundation.

THE WITNESS: Only in the sort of vaguest and most general terms. Well, I am sure it's more than 10,000. Again, it could be 20,000; it could be 30,000. I just don't know.

Those firms -- with the exception of Mr. Cooney's firm, those firms represent a lot of people. And in the case of Mr. Rice, he has co-counsel relationships, his firm does, with a lot of other firms. So it gets into the question of, quote, what do you mean by representation, sole representation, joint representation. But, suffice it to say, they represent a lot of claimants.

BY MR. BROWN:

Q. Okay. And in their capacity as counsel for those claimants, they have

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THE WITNESS: No, except that it's -- I think we established when we were doing request for admission or something to somebody that all four of those, each one of those firms represents at least 1,000 claimants against Grace.

BY MR. BROWN:

Q. We did.

A. What I don't know is how many more than a thousand any of them may represent.

Q. Okay.

A. The proofs of claim are on file. Somebody could go and ascertain that, if it mattered.

Q. Okay. Do you know how many -- the firms that those four TAC members are members of collectively how many they have? In other words, if you took the four firms, do you have an idea or estimate as to the number of claims that they have against Grace?

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fiduciary duties to their clients, correct?

A. However those are established by the local bars, et cetera, before which they practice, yes, generally.

Q. And they get paid to represent those clients, correct?

A. Generally speaking, I assume that's correct.

Q. And is it your understanding that, generally speaking, that's through a contingency arrangement?

A. Again, generally speaking, correct.

Q. And is it your understanding that the contingent fee that is typically charged by those firms is somewhere between 33 and a third and 40 percent of the recovery?

MR. FINCH: Objection, lack of foundation, calls for speculation.

THE WITNESS: I really don't

1 have firsthand knowledge of that.
2 BY MR. BROWN:

3 **Q. Okay. Well, if it's a**
4 **contingent fee arrangement and there is**
5 **no recovery, there is no payment to the**
6 **firm, generally speaking, correct?**

7 A. Except for reimbursed
8 expenses in those states that permit you
9 to advance expenses and require that you
10 seek recovery from your client under
11 their ethical rules, but yes.

12 **Q. So is it fair to say that**
13 **Mr. Budd, Mr. Cooney, Mr. Weitz, and**
14 **Mr. Rice are motivated by their fiduciary**
15 **obligations and their own personal gain**
16 **to obtain a recovery on behalf of their**
17 **clients against the Asbestos PI Trust?**

18 A. When they are acting as
19 counsel for their individual clients,
20 yes.

21 **Q. Okay. How about when they**
22 **are acting as TAC members?**

23 A. When they are acting as TAC
24 members, they have a fiduciary

1 are not acting as TAC members. And when
2 they are acting as TAC members, they are
3 not involved in processing individual
4 claims or evaluating individual claims or
5 having anything to do with individual
6 claims any more than they are as ACC
7 members with respect to individual claims
8 and their clients in the bankruptcy case.

9 **Q. Well, if you look at (e),**
10 **the section that I referred you to at the**
11 **outset, it says that the TAC members**
12 **should consult with the trustees on**
13 **matters of general implementation and**
14 **administration of the PI Trust.**

15 MR. FINCH: Object to form.

16 The document doesn't say that.

17 BY MR. BROWN:

18 **Q. All right. Mr. Lockwood,**
19 **just take a look at Section 8, if you**
20 **would.**

21 A. It says, "The Trustees shall
22 consult with the TAC and the Futures
23 Representative on the general
24 implementation and administration of the

1 obligation, as they do as ACC members, to
2 look out for the interests of the
3 constituency they represent as a whole.

4 **Q. Okay. And the fiduciary**
5 **duties that they owe to their clients, on**
6 **the one hand, and to all beneficiaries of**
7 **the Asbestos PI Trust, on the other hand,**
8 **are they the same?**

9 A. I don't know how to answer
10 that question.

11 **Q. Let me --**

12 A. Because they are acting in
13 different capacities. So when you say
14 are they the same, do you mean do they
15 come from the same source? I can't
16 answer that.

17 **Q. Are the fiduciary duties**
18 **that they have to their clients, on the**
19 **one hand, and to all claimants against**
20 **the Asbestos PI Trust in conflict with**
21 **one another at any level?**

22 A. As a general proposition, I
23 don't think so, because when they process
24 individual claims against the Trust, they

1 PI Trust."

2 **Q. Okay. What's covered by**
3 **Romanette (i), would that involve how the**
4 **Trust should deal with meritless claims?**

5 A. That question is hard to
6 answer in the sense that I am not sure
7 what you mean by meritless claims. I
8 mean, the TDPs identify what claims are
9 eligible for compensation and what
10 aren't.

11 If you are of the personal
12 opinion that certain categories of claims
13 under the TDP, under the criteria are,
14 quote, meritless, close quote, well, the
15 TAC and the Futures Rep take the TDP as
16 it finds it.

17 So they don't have a
18 fiduciary obligation to render personal
19 opinions about the TDP criteria as it
20 applies to individual clients or
21 individual claims.

22 That said, at some level, I
23 suppose they have a generalized -- if the
24 trustees raise with them the question, on

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1 some generalized basis, whether there is
2 some large category of claims that are,
3 quote, meritless that are not otherwise
4 prescribed by the Trust, I could
5 hypothesize the situation where they
6 might be consulted on that subject.

7 **Q. Okay. And that would be**
8 **true even if their firm was the firm that**
9 **submitted those claims, correct?**

10 A. Well, if their firm was the
11 firm that submitted their claims, I would
12 assume that they would recuse themselves,
13 just like any organization, if there was
14 a specific conflict of interest on a
15 subject like that, the party involved
16 would recuse themselves.

17 **Q. Is there anything in the**
18 **Trust Agreement or the TDP that requires**
19 **them to recuse themselves?**

20 A. No, but there is nothing in
21 the TDP that requires them to act in any
22 way different from any set of fiduciaries
23 that are they are confronted in a
24 particular factual context, some conflict

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1 of interest between their personal
2 interests and their interest of the
3 entity that they are involved with.

4 **Q. Well, to the extent that**
5 **their fiduciary duties to their clients**
6 **in any particular case are in conflict**
7 **with their fiduciary duties to all**
8 **beneficiaries of the Asbestos PI Trust,**
9 **are they required to step aside from the**
10 **decision-making?**

11 MR. FINCH: Objection, form.

12 THE WITNESS: Yeah, I
13 mean -- if you take the position
14 that prosecuting an individual
15 claim is a conflict with the
16 interest of the Trust as a whole
17 because if the claim is
18 successful, it will reduce the
19 amount in the Trust that would be
20 available to other people; if the
21 claim were unsuccessful, then no,
22 they don't have an obligation not
23 to prosecute individual claims.

24 It's well understood that

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1 the whole function of the TAC is
2 to represent the interest of
3 people with individual claims,
4 albeit on a collective basis.

5 If you are saying the
6 hypothetical you gave earlier that
7 if there was some -- the trustees
8 were proposing a change that
9 somehow or another focused on the
10 individual claims of a particular
11 firm as opposed to categories of
12 claims that virtually all lawyers,
13 asbestos lawyers represented, then
14 you might have a recusal issue.

15 And/or the trustees might be
16 motivated to discount the advice
17 they were getting. Because this
18 is a consultation provision. It
19 doesn't say the trustees having
20 consulted with the TAC; all of a
21 sudden have to agree with whatever
22 the TAC tells them. It just says
23 they have to consult with them.

24 BY MR. BROWN:

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1 **Q. What about the next**
2 **subsection, which is (f), which sets**
3 **forth a whole series of items on which**
4 **the trustees must obtain the consent of**
5 **the TAC and the Futures Representative?**

6 A. Subject to certain other
7 provisions that apply if the TAC and the
8 FCR don't give their consent, yes. What
9 do you mean what about it? There are --
10 it exists in the TDP, in the Trust
11 Agreement. And there are specified
12 things that they have to obtain consent
13 from the TAC on and the FCR, and if they
14 don't get the consent, they can get them
15 overruled by the judge.

16 **Q. Let me ask you a more**
17 **general question. What is the need to**
18 **have the TAC?**

19 A. The TAC goes back -- the
20 concept goes back at least to the
21 Manville TDP. And the notion was that
22 this was -- this Trust was created --
23 well, let me start out by saying that my
24 partner, Mr. Inselbuch, who you are going

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1 to take the deposition of on June 12th --

2 **Q. Somebody is.**

3 A. -- is a lot better to
4 equipped to give you the historical
5 overview of these kind of TDP provisions
6 than I am, and anything I say on this
7 subject frankly is subject probably to be
8 corrected by him.

9 But, in general, as I
10 understand the history of the concept,
11 the idea was that this is a settlement
12 between a whole lot of people who are
13 agreeing to have their claims taken away
14 from the Debtor and put in a Trust, and
15 the Trust is going to deal with the
16 claims.

17 And the notion was that --
18 first, it was always a criteria you would
19 not put a asbestos personal injury lawyer
20 or anybody would submit claims in as a
21 trustee. So the trustee, by definition,
22 therefore, in order to avoid that sort of
23 conflict, were not going to have any real
24 knowledge about asbestos personal injury

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1 litigation and asbestos personal injury
2 claims.

3 And, as I understand, the
4 notion was that it would be a good idea
5 to do two things: First, have
6 experienced personal injury lawyers
7 around who could, to the extent needed,
8 educate trustees who come to the job with
9 no real knowledge of how the system works
10 to give them input. That's the
11 consultation notion.

12 And the same for the FCR,
13 who would be a counterbalance, to some
14 extent, because to the extent that the
15 TAC represents present claimants, it
16 would have, even as a collective group
17 representing present claimants, some kind
18 of incentive to try and get more money
19 out sooner than might be in the
20 beneficial interests of the future
21 claimant. So you have the Future
22 Claimants' Representative who has got
23 coequal status in the TAC in advising the
24 trustees.

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1 With respect to the consent
2 process, the notion was we made a deal in
3 the bankruptcy case. That deal was
4 embodied in the Trust Agreement and the
5 TDP. If people are going to start
6 changing that deal after the fact, then
7 representatives who knew and were
8 involved with making the original deal
9 ought to at least presumptively have some
10 voice in whether or not it's okay to
11 change it.

12 However, there is the safety
13 valve on that, which is if the TAC, for
14 example, decides that they want to
15 resist -- let's assume you needed to
16 change the payment -- lower the payment
17 percentage because you thought there was
18 going to be more future claims coming in
19 than had been predicted.

20 Well, the TAC might have an
21 institutional interest in keeping the
22 payment percentage high, and the Futures
23 Rep might want to see it lowered and the
24 trustees might want to see it lowered.

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1 So how do you deal with that?

2 Well, the TAC is supposed to
3 be representing the present claimants.
4 That's where their fiduciary is. So if
5 they don't consent, you go to the judge,
6 and you say, judge, "The TAC is being
7 unreasonable here." And that's how you
8 resolve it. So, in an overview sense,
9 that's the concept behind it.

10 **Q. Okay. The statute 524(g)**
11 **does not require a TAC in connection with**
12 **an asbestos Trust, does it?**

13 A. It doesn't require a TAC,
14 and it doesn't require a Futures Rep.
15 But the legislative history says it was a
16 modeled on Manville and Manville has had
17 an SEB on the Futures Representative,
18 vis-a-vie the Trust, at least since the
19 Trust was reorganized in the mid-1990s or
20 early 1990s. Again, Inselbuch can tell
21 you more about that because he was there.

22 **Q. The TAC, if I understand the**
23 **Trust Agreement, has fiduciary duties to**
24 **indirect PI Trust claimants as well,**

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1 correct?

2 A. As a general proposition,
3 that's true.

4 Q. Now --

5 A. But I will say -- it's a
6 little tricky because it's clear that the
7 vast bulk of the claimants whose claims
8 were being channelled to the Trust are
9 direct claimants. And, moreover, the
10 individual -- the indirect claimants
11 generally tend to be entities that have
12 the financial and legal wherewithal to
13 look at their own interests.

14 So my own personal
15 perspective on it, while you can make a
16 general statement on the fiduciary
17 obligation, the major focus of the TAC
18 and the FCR is direct claimants, not
19 indirect claimants.

20 Q. To the extent that the TAC
21 acts in a manner that the indirect
22 asbestos PI claimants feel is in their
23 interest, is the TAC insulated from any
24 liability to indirect asbestos PI

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1 claimants?

2 A. Could you reread that
3 question, please?

4 (The reporter read from the
5 record as requested.)

6 THE WITNESS: Aren't you
7 missing a "not" in that question?
8 BY MR. BROWN:

9 Q. Against their interest is
10 what I meant.

11 A. There is, I think, in here
12 some kind of a -- I don't know what you
13 call it -- exculpation provision or
14 something. But it doesn't cover bad
15 faith.

16 So the answer is we would
17 have to look at the document to determine
18 exactly what potential liability the TAC
19 has.

20 And, moreover, given the
21 TAC's role, which is it doesn't have the
22 unilateral power to make any decisions.
23 The trustees make the decision, and the
24 TAC consults or consents. It's a little

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1 hard to hypothesize the claim that you
2 talk about.

3 But, in any event, I am
4 looking for the -- I am pretty sure there
5 is a Trust Agreement provision here
6 somewhere that addresses -- Section 4.6.
7 Essentially, it provides for indemnity
8 and exculpation to the extent that that's
9 permitted by a statutory trust law, Trust
10 organized under the laws of Delaware. So
11 whatever the laws of Delaware permit you
12 to indemnify fiduciaries for is what's
13 provided.

14 And that's obviously both
15 fact-specific and depends. And I don't
16 know what Delaware law does or doesn't
17 provide on hypothetical fact
18 circumstances.

19 Q. Let's go to page 13 on my
20 draft.

21 A. Of the Trust Agreement?

22 Q. Yes.

23 A. I am there. What Section is
24 this, just to make sure we have the same

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1 pagination?

2 Q. It's under the Consent
3 provision. It's (f), Romanette (xiv).

4 A. I see it.

5 Q. I am not sure I understand
6 this, the latter part of this, and I want
7 to ask you what it means.

8 Do you see where it says,
9 "...or to comply with an applicable
10 obligation under an insurance policy or
11 settlement agreement pursuant to Section
12 [6.5] of the TDP"?

13 A. Yes.

14 Q. Does this mean that the
15 trustees need the consent of the TAC in
16 order to comply with obligations under
17 insurance agreements, insurance policies?

18 A. Well, first, since it
19 incorporates Section 6.5 of the TDP, you
20 have to look to see what that is, because
21 it certainly -- if there is any
22 limitations on their ability to comply
23 with obligations under transfer insurance
24 rights, it's got to be spelled out in

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6.5. There is no other limitation expressed in that paragraph. 6.5 deals with the confidentiality of claimants' submissions. In general, it takes the position that claimants' submissions to the Trust are made in the course of settlement negotiations and, therefore, would be treated as confidential. To the extent state law provides a privilege, the privilege is not going to be eliminated.

There is then a provision -- there is a provision about subpoenas getting information. And then there is the sentence, "Notwithstanding anything in the foregoing to the contrary, with the consent of the TAC and the Futures Representative, the PI Trust may, in specified limited circumstances, disclose information, documents or other materials reasonably necessary in the PI Trust's judgment to preserve, litigate, resolve or settle coverage, or to comply with any

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applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Policies or the Asbestos Insurance Settlement Agreements; provided...", and then it takes steps reasonably feasible in its judgment to preserve the further confidentiality of such documents, et cetera.

That's the scope of this. It basically has to do with the confidentiality of medical information and personal information that's submitted in claims files.

Q. So if an insurance company wants to see that information because the Trust is seeking recovery under an insurance policy for that claim, the trustees need the consent of the TAC to provide that information to the insurer; is that correct?

A. Voluntarily. And, again, if the TAC were to refuse to consent to it, there is dispute resolution provisions. The Trust could go to the bankruptcy

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court, and indeed there have been some instances in which there has been litigation, existing trusts by the Trust, trying to get the court to determine that certain claims information has to be turned over to certain insurers in connection with settlement agreements, for example.

And in some instances, the Trust has issued orders saying that effect. So this is not an absolute veto power on the part of the TAC.

But, as I say, the plaintiffs bar and their clients have a general feeling that their personal medical information shouldn't be indiscriminately disseminated to anybody who says they have a desire to do so -- excuse me -- to use it for whatever purposes they may wish to use it.

Q. I want to turn your attention now to Section 5.5.

A. Of the Trust Agreement?

Q. Yes.

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A. Okay.

Q. Now, there is a provision, as I understand it, under the TDP pursuant to which an asbestos PI claim can resort to the tort system after going through a bunch of hoops; is that correct?

A. Correct.

Q. If the asbestos PI claimant elects to do that, then I presume that the Trust will have defense counsel to defend that claim; is that correct?

A. One would assume that would be the case. It's happened to infrequently in practice that it's hard to know, but I can't imagine that they would defend themselves in court without a lawyer.

Q. Okay. And would that lawyer be a Trust professional as that term is used in Section 5.5(a)?

MR. FINCH: 5.5(a) talks about TAC employment of professionals.

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THE WITNESS: But it also talks about Trust professionals.

You would have to go back and look at the definition of Trust professional.

That's an interesting question. I don't know whether they would be considered to be a Trust professional or not, actually.

BY MR. BROWN:

Q. I don't think I can find a definition of Trust professional.

A. It's in Section 4.8(a), the fourth line. As a general proposition, the Trust professionals are clearly people who represent the Trust in a sort of generalized sense, but it does include counsel. Whether or not it would include counsel in a particular case -- suffice it to say that if the question is would the TAC and members of the TAC have access to the files of a counsel for the Trust that was the defending case --

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A. It says provided -- it says "...complete access to all information generated by them..." and it talks about the TAC as a group.

An individual tort claim would not be litigated by the TAC as a group. At best, it would be litigated by one of the TAC members. And the TAC members -- I can't imagine the TAC members saying, that as a group, we want to find out how you are defending a particular claim against did Trust so we can give that information to the plaintiff's lawyer that's part of our group so we can help win the case.

I mean, it's just a preposterous suggestion, quite frankly. I mean, yeah, you are right, the document doesn't prohibit that particular abuse of fiduciary authority. But, you know, documents generally don't hypothesize every possible breach of fiduciary duty. You could create a laundry list, 50 pages long, of all of those possible abuses and

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Q. That's the question.

A. -- brought by the TAC's law firm, the answer is no.

Q. Where does it say that?

A. It doesn't have to say that because the TAC's role is a generic role. It talks about the general administration of the Trust, et cetera.

Asking for information about an individual claim that that guy is pursuing in a tort system against the Trust has nothing to do with the general administration of the Trust and would be a blatant exercise in abuse of kind of fiduciary power, and no trustee would accept it. And I don't believe it would ever cross the mind of any TAC member that they could even try it, much less succeed at it.

Q. But this provision does give them complete access, correct, as written? It says, "...complete access to all information generated by them or otherwise available to the PI Trust..."

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say thou shall not commit each one of them.

Q. Mr. Lockwood, I am correct, am I not, that there was no asbestos insurance entity that was involved in the drafting of the Asbestos PI Agreement?

A. To the best of my knowledge, that's correct.

Q. Let's turn to Plan Exhibit-4.

A. I have it.
(Exhibit-11 marked for identification at this time.)

THE WITNESS: Do you want me to identify it?

MR. BROWN: Yes.

THE WITNESS: It's the Grace Trust Distribution Procedures.

BY MR. BROWN:

Q. Okay. Now, no asbestos insurance entity was invited to participate in the drafting of the TDP, correct?

A. To the best of my knowledge,